



National Aeronautics and
Space Administration
Washington, DC 20546

Procurement Notice

PN 04-55
January 20, 2011

APPOINTMENT OF CONTRACTING OFFICER TECHNICAL REPRESENTATIVES

PURPOSE: This PN revises the NASA FAR Supplement (NFS) to incorporate changes to the COTR appointment process.

BACKGROUND: NFS 1842.270 establishes the policy and procedures for the contracting officer to follow when appointing a COTR. This procurement notice revises the policy in these areas: (1) Appointing alternate COTRs; (2) Notifying the CO when a COTR will leaving the organization; (3) Authorizing certain COTRs to issue emergency, on-site change orders, and (4) Requiring COTRs on Phase II and Phase III awards made under NASA's Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) to meet Federal Acquisition Certification for Contracting Officer Technical Representatives (FAC-COTR) requirements.

GUIDANCE: (1) Contracting officers shall follow the revised policy when appointing alternate COTRs. If the contracting officer appoints alternate COTRs, there must be strong, written controls in place to ensure the primary COTR, the alternate, and the contractor understand the line of authority and when the alternate COTR may act in place of the primary COTR. Controls must be in place to prevent situations where the contractor may receive contradictory direction from the COTR and alternate COTR. In appropriate circumstances, the policy also allows for multiple alternate COTRs, if circumstances warrant and the Procurement Officer approves the action. Procurement officers may choose to further restrict or prohibit this policy based on center-unique circumstances.

(2) COTRs and their supervisors are responsible for promptly notifying the CO when the COTR has a change in station, duty assignment, or leaves Government service.

(3) COs may use NASA Form 1634 for delegations made to construction contract COTRs to issue emergency on-site change orders up to \$25,000 only. Any other delegations of procurement authority to COTRs shall be made in accordance with FAR 1.603-3 and the NASA Procurement Career Development and Training Policy.

(4) Government Accountability Office and Office of Inspector General reports have identified weaknesses in the internal controls of the NASA's Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) program. To improve internal controls in the area, 1842.270(g)(1) is revised to require COTRs on Phase II and Phase III SBIR/STTR contracts be FAC-COTR certified. Before appointing COTRs to these contracts, the CO shall ensure the individuals are FAC-COTR certified.

ACQUISITIONS AFFECTED BY CHANGES: This requirement is applicable to all COTR appointments on or after the effective date of this procurement notice.

ACTION REQUIRED BY CONTRACTING OFFICERS: COs shall follow the revised procedures for appointing COTRs.

CLAUSE CHANGES: None.

PARTS AFFECTED: Parts 1842.

REPLACEMENT PAGES: You may use the enclosed pages to replace 42:3, 42:4, 42:5, 42:6, and 42:6.1 of the NFS.

TYPE OF RULE AND PUBLICATION DATE: These changes do not have a significant effect beyond the internal operating procedures of NASA and do not have a significant cost or administrative impact on contractors or offerors. Therefore they do not require codification in the Code of Federal Regulations (CFR) or publication for public comment.

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William P. McNally
Assistant Administrator for Procurement

Enclosure

DISTRIBUTION LIST:
PN List

a written request shall be forwarded to the cognizant program director for approval with the concurrence of the Assistant Administrator for Procurement (Code HS). The following supporting information shall be forwarded with the request to make the assignment:

- (i) A statement of the special circumstances that necessitate the assignment.
 - (ii) The contract administration services to be performed.
 - (iii) A summary of any discussions held with the cognizant contract administration organization.
 - (iv) A staffing plan covering three years or such shorter period as may be appropriate.
- (2) The provisions of this paragraph do not apply to NASA audit personnel assigned to the field installations, to NASA technical personnel covered by 1842.101 and paragraph (b) of this section, unless they are performing any contract administration functions listed in FAR 42.302(a), or to personnel assigned to contractors' plants on NASA or other Federal installations.
- (b) NASA may assign technical personnel (such as quality assurance, reliability, or engineering representatives) to contractors' plants or laboratories to provide direct liaison with NASA and technical assistance and guidance to the contractor and DOD. The duties and responsibilities of these technical representatives shall be clearly defined and shall not conflict with, duplicate, or overlap with functions delegated to DOD personnel. NASA shall advise appropriate DOD and contractor organizations of the duties and responsibilities of NASA technical personnel.
- (c) When a NASA resident office, including any assigned technical personnel, and a DOD contract administration office are performing contract administration functions for NASA contracts at the same contractor's facility, the two offices shall execute a written agreement clearly establishing the relationship between the two organizations and the contractor. The agreement should eliminate duplication in the performance of contract administration functions and minimize procedural misunderstandings between the two organizations. Such agreements shall be consistent with existing delegations to the contract administration offices concerned and shall specify the relationship of NASA nonprocurement resident personnel to their DOD and contractor counterparts if such personnel will be involved in any aspect of contract administration.

Subpart 1842.2--Contract Administration Services

1842.202 Assignment of contract administration.

(b) *Special instructions.*

(i) The functions described in 42.302(b)(1) and the following subparagraphs of 42.302(a) are normally retained: (3), (10), (12), (13), (14), (15), (17), (18), (19), (20), (21), (22), (23), (24), (29), (32), (43), (44), (45), (46), (48), (51), (56), (58), (59), (62), (63), (64), (65), (69), and (70).

(d) *Transmittal and documentation.* In addition to the instructions at FAR 42.202(d)(1) through (4), contracting officers shall --

(i) Send delegations to DOD contract administration offices in accordance with the instructions in the DOD Directory of Contract Administration Services Components (DLAH 4105.4).

(ii) At time of contract award, prepare and forward NASA Form 1430, Letter of Contract Administration Delegation, General, and appropriate appendices (NASA Form 1430A, 1430B, 1430C, and 1430D) to the contract administration office

(iii) Forward NASA Form 1431, Letter of Acceptance of Contract Administration, with each NASA Form 1430 and appropriate appendices. Contracting officers shall use the returned NASA Form 1431 as contract file documentation that the delegation has been accepted, modified or

rejected by the contract administration office and as a reference for points of contact for each of the functional areas delegated.

(iv) Use NASA Form 1433, Letter of Audit Delegation, to delegate the audit function and to amend previous delegations. Distribute copies of the contract and NASA Form 1433 as follows:

(A) *Audit office*: One copy of the contract and three NASA Forms 1433. When the Department of Health and Human Services is designated as the audit office, item 12 on NASA Form 1433 shall be marked "Not applicable."

(B) *Contractor*: One NASA Form 1433.

(C) *Cognizant NASA fiscal or financial management office*: One NASA Form 1433.

(v) For contracts with the Canadian Commercial Corporation (CCC), audits are automatically arranged by the Department of Defense Production (Canada) (DDP) in accordance with agreements between NASA and DDP. Audit reports are furnished to DDP. Upon advice from DDP, CCC will certify the invoice and forward it with Standard Form 1034, Public Voucher, to the contracting officer for further processing and transmittal to the fiscal or financial management officer.

(vi) For contracts placed directly with Canadian firms, audits are requested by the contracting officer from the Audit Services Branch, Comptroller of the Treasury, Department of Finance, Ottawa, Ontario, Canada. Invoices are approved by the auditor on a provisional basis pending completion of the contract and final audit. These invoices, accompanied by SF 1034, are forwarded to the contracting officer for further processing and transmittal to the fiscal or financial management officer. Periodic advisory audit reports are furnished directly to the contracting officer.

1842.202-70 Retention of contract administration.

(a) The assignment of contract administration is optional for the following contracts:

(1) Research and development study contracts not involving deliverable hardware or Government furnished property.

(2) Contracts with periods of performance of 90 days or less.

(3) Contracts with periods of performance of 91 to 180 days that do not include all of the following:

(i) A small business subcontracting plan.

(ii) Government-furnished property.

(iii) Progress payments, if a fixed-price type contract.

(4) Purchase orders without Government source inspection requirements.

(5) Contracts requiring only on-site performance.

(6) Contracts requiring work in the vicinity of the awarding center where DOD contract administration services are not reasonably available.

(b) The determination to assign Quality Assurance, Property Administration or Plant Clearance for administration shall be made after review by the cognizant technical personnel.

1842.270 Contracting officer technical representative (COTR) delegations.

(a) The cognizant contracting officer may appoint a qualified Government employee to act as their representative in managing the technical aspects of a particular contract. Technical organizations are responsible for ensuring that the individual they recommend to the contracting officer possesses training, qualifications and experience commensurate with the duties and responsibilities to be delegated and the nature of the contract.

(b) If necessary, the contracting officer may appoint an alternate COTR to act during short absences of the COTR, such as when the COTR is on leave or travel. When approved by the Procurement Officer and in limited circumstances, warranted by contract scope, workload, and the need to provide adequate oversight, the contracting officer may appoint more than one alternate COTR on a contract. If more than one alternate COTR is appointed, the contracting officer shall provide the COTR, the alternate COTR(s), and the contractor written guidance specifying how the line of succession works to clearly ensure each party knows who is acting as the COTR at any given time.

(c) NASA Form 1634, Contracting Officer Technical Representative (COTR) Delegation, shall be used to appoint COTRs. The contracting officer will modify the form to address the specific contract functions delegated to the COTR or retained by the contracting officer. COTRs cannot redelegate their duties and responsibilities and the COTR may be held personally liable for unauthorized acts. However, this does not prohibit the COTR from receiving assistance for the purpose of monitoring contractor progress and gathering information. When one individual is appointed as a COTR on more than one contract, separate delegations shall be issued for each contract. A separate NASA Form 1634 shall be used to appoint the alternate COTR(s).

(d) A COTR delegation remains in effect throughout the life of the contract unless canceled in writing by the cognizant contracting officer or at any level above that contracting officer. The contracting officer may modify the delegation only by issuance of a new delegation canceling and superseding the existing delegation. The COTR and his or her immediate supervisor are responsible for promptly notifying the contracting officer when the COTR has a change in station, duty assignment, or leaves Government service.

(e) With the exception of delegations made to construction contract COTRs to issue emergency on-site change orders, NASA Form 1634 shall not be used to authorize a COTR to initiate procurement actions or in any way cause a change to the contract or increase the Government's financial obligations. Instead, any delegations of procurement authority to COTRs shall be made in accordance with FAR 1.603-3 and the NASA Procurement Career Development and Training Policy, available at <http://prod.nais.nasa.gov/portals/pl/training.html>. When delegating the COTR authority to issue emergency on-site change orders, the contracting officers shall specify in NASA Form 1634 a not to exceed limitation on this authority. In no event shall the limitation exceed \$25,000.

(f) Each COTR shall acknowledge receipt and accept the delegation by signing the original delegation letter and returning it to the contracting officer. The contracting officer shall file original of the COTR delegation letter in the applicable contract file. Copies of the signed COTR delegation letter shall be distributed to the COTR, the contractor, and each cognizant contract administration office. Acknowledgment and distribution for terminations of COTR delegations and COTR delegations which revise authority, duties and responsibilities shall follow the same rules.

(g) Federal Acquisition Certification for Contracting Officer Technical Representatives (FAC-COTR) Requirements.

(1) These requirements apply to all individuals appointed as COTRs and alternate COTRs on NASA contracts, including Phase II and Phase III awards made under NASA's Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs. These requirements do not apply to individuals managing grants, or Phase I SBIR or Phase I STTR awards.

(2) FAC-COTR certificates from any civilian agency are equivalent to NASA FAC-COTR certificates. The following certificates, from NASA or any civilian agency, are equivalent to a NASA FAC-COTR certificate:

- (i) Federal Acquisition Certification in Contracting (FAC-C) Level I or above; or
- (ii) Federal Acquisition Certification for Program and Project Managers (FAC-P/PM) Mid-Level/Journeyman.

(3) An individual with a FAC-COTR does not necessarily meet the requirements for the FAC-C Level I or the FAC-P/PM mid-level/journeyman.

(4) For recordkeeping purposes, individuals with equivalent certificates who will be appointed as COTRs must submit a copy of their equivalent certificate to the ACM to be recorded as meeting NASA FAC-COTR requirements.

(5) Basic COTR Training. To earn a NASA FAC-COTR certificate, individuals must complete 40 hours of basic COTR training approved by the ACM. ACM approved training is available under the NASA Shared Service Center's Agency-wide COTR Training Blanket Purchase Agreement (BPA).

(6) Continuing Education. COTRs must maintain their skills currency through continuing education. To maintain a FAC-COTR, COTRs are required to earn 40 continuous learning points (CLPs) of skills currency training every two years. The two-year continuous learning cycle is set for all civilian agencies for the following timeframes: October 01, 2009, until September 30, 2011, October 01, 2011 until September 30, 2013, and so forth.

(7) With the exception of the NASA-specific COTR refresher training, there are no specific courses required for COTR continuing education. Supervisors remain responsible for working with COTRs to identify those activities and opportunities of greatest benefit to the professional development of an individual. The training, professional activities, education and experience that are used to meet the continuing education requirements must be job related.

(i) Each two-year cycle shall include NASA-specific COTR refresher training which has been approved by the ACM. ACM approved training is available under NASA Shared Service Center's Agency-wide COTR Training BPA.

(ii) Appendix A to the Office of Federal Procurement Policy's memorandum, The Federal Acquisition Certification for Contracting Officer Technical Representatives, dated November 26, 2007, provides additional guidance on determining continuous learning points. The memorandum is available at <http://www.fai.gov/pdfs/11-26-COTR-Memo.pdf>.

(8) A FAC-COTR will expire if the continuing education requirements are not met and the individual will no longer be eligible to be a COTR.

(9) FAC-COTR training, both basic and continuous, will be tracked in SATERN. COTRs are responsible for ensuring their SATERN learning history is accurate.

(h) The contracting officer shall verify that the proposed COTR has a FAC-COTR before signing NASA Form 1634. The Procurement Officer (PO) may defer, for a period not to exceed six months, all or part of the FAC-COTR requirements in writing, on a case-by-case basis, if granting the deferment is in the best interest of the Agency. This authority shall be used only when necessary. A written justification shall specify the reasons for and conditions of the deferment. A copy of the justification shall be furnished to the ACM and documented in the contract file(s).

(1) If the proposed COTR has not completed basic COTR training, the PO shall ensure the proposed COTR receives appropriate interim training until the required COTR basic training is completed. Interim training is a stop gap measure to ensure the COTR understands his or her

authority and responsibilities. It may include a briefing or on-line training. Completion of the interim training shall be documented in the applicable contracts file(s).

1842.271 NASA clause.

Insert the clause at 1852.242-70, Technical Direction, when paragraph 3(m) of the NASA Form 1634 specifically authorizes a COTR to issue technical direction.

Subpart 1842.3--Contract Administration Office Functions**1842.302 Contract administration functions.**

(a) In addition to the responsibilities listed in FAR 42.302(a), responsibility for reviewing earned value management system (EVMS) plans and verifying initial and continuing contractor compliance with NASA and DoD EVMS criteria and conformity with ANSI/EIA Standard 748, Industry Guidelines for EVMS, is normally delegated to DCMA.

Subpart 1842.5--Postaward Orientation**1842.503 Postaward conferences.**

(1) A postaward conference shall be held with representatives of the contract administration office when --

(i) A contract is expected to exceed \$10,000,000;

(ii) Contract performance is required at or near a NASA installation or NASA-controlled launch site;

(iii) The delegation will impose an abnormal demand on the resources of the contract administration office receiving the delegation; or

(iv) Complex contract management problems are expected, particularly risk management areas identified during program and acquisition planning, e.g., significant or unusual mission success, technical, cost, schedule, safety, security, occupational health, environmental protection, and export control risks.

(2) Procurement officer approval is required to waive a post-award planning conference for contracts meeting any of the criteria in paragraph (1) of this section. The request for procurement officer approval to waive a post-award conference shall address action taken and planned to ensure effective communication with the contract administration office during the performance of the contract.